THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.26136 of 1997

Dated 06-03-2007

Between:
The Depot Manager, A.P.S.R.T.C., Bus Depot, Bodhan District, Nizamabad.

..... PETITIONER

AND

B.Babu & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.26136 of 1997

O R D E R:

Aggrieved by the award of the Labour Court-II, Hyderabad in I.D.No.143 of 1993 dated 26-08-1996, in directing reinstatement of the first respondent with all attendant benefits such as continuity of service and limiting payment of backwages to 25%, the A.P.S.R.T.C. is before this Court.

The charges levelled against the first respondent were as under:

1. For having failed to issue tickets to a batch of 28 passengers upto the point of check who boarded the bus at Biloli bound for Kondalwadi ex.stages 7 to 8 even after collecting the requisite fare of Rs.1.50ps. each amounting to Rs.42/- in total from them at their boarding point Biloli itself, which constitutes misconduct in terms of Reg.28 (sub-clause (vi)(a)(x) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963).
2. For having failed to collect the fare and issue tickets to three passengers who boarded the bus at Biloli bound for kondalwadi ex.stages 7 to 8 which constitutes misconduct in terms of Reg.28 (sub-clause (vi) (a) (x) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963).
3. For having violated the rule 'Issue and Start' while conducting the bus No.AP.9Z.1854 on route Bodhan-Kondalwadi on 24-01-1992 which constitutes misconduct in terms of Reg.28 (sub-clause (vi) (a) (x) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.
4. For having failed to close the SR of all denominations against stages 6 and 7 which constitutes misconduct in terms of Reg.28 (sub-clause (vi) (a) (x) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

An enquiry was held and on the charge being established, the first respondent was imposed the punishment of removal from service. Aggrieved thereby, he approached the Labour Court under

Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). The Labour Court took note of the fact that the check was exercised at stage No.7/8 at Razapur village at 06.55 P.M., that the checking officials had detected that the first respondent had failed to issue tickets to a batch of 28 passengers who boarded the bus, that the petitioner had collected requisite fare of Rs.1.50 each for 28 passengers at their boarding point itself and had also failed to collect the fare and issue tickets to three passengers who boarded the bus later, and had violated the rule of 'issue and start'. The Labour Court also held that the first respondent had failed to close the SR of all denominations against stages of 6 and 7. The enquiry officer also noted that the bus had proceeded upto 4 kilometres from the starting point and the action of the first respondent/conductor in not issuing tickets was a deliberate act on his part and that the charges were held proved against him. While holding that the findings of the enquiry officer became unassailable, the Labour Court held that there were 62 passengers including ticketless passengers about 50% of the total number of passengers, and taking into consideration the totality of the facts and circumstances of the nature of irregularities committed and the amount involved, the punishment of removal was harsh and disproportionate and that the doctrine of proportionality had not been followed. Following the judgment in **The Milk Products Factory, A.P., Dairy Development Corporation Ltd. v. V.K.Durga Rao**[1], the Labour Court interfered with the quantum of punishment and directed the petitioner-Corporation to reinstate the first respondent into service with all attendant benefits such as continuity of service but with 25% backwages.

Sri V.T.M.Prasad, learned standing counsel for the petitioner-Corporation, would submit that the Labour Court, while exercising jurisdiction under Section 11-A of the Act cannot interfere with the

punishment imposed by the employer on grounds of sympathy or as a matter of course. Learned standing counsel would further submit that since the charges held established against the first respondent are grave and serious in nature, the Labour Court ought not to have interfered with the punishment imposed on the first respondent by the petitioner herein.

Sri V.Narsimha Goud, learned counsel for the first respondent, on the other hand, would contend that the facts and circumstances of the case justified the Labour Court directing reinstatement of the first respondent and limiting payment of backwages to an extent of 25%. Learned counsel would further contend that since the Labour Court has been conferred power under Section 11-A of the Act to interfere with the quantum of punishment, and since the award denying the first respondent backwages to an extent of 75% is a punishment, which the Labour Court could impose under Section 11-A of the Act, it is not for this Court in certiorari proceedings under Article 226 of the Constitution of India to sit in appeal over such findings or to substitute the punishment by another. Learned counsel would seek to justify the punishment imposed by the Labour Court and contend that since the nature of duties discharged by a conductor resulted in their being under constant pressure and, in the present case, since issuance of tickets was to a batch of 28 passengers and the conductor was in the process of issuing tickets to them when the check was conducted, the award of the Labour Court, in directing reinstatement and in limiting backwages only to 25%, was valid and did not necessitate interference. Learned counsel would contend that, during the pendency of the writ petition, the first respondent was, in fact, reinstated into service and interfering with the award would result in his now being removed from service.

On being asked by this Court to ascertain the present position,

learned standing counsel for the petitioner-Corporation would submit that the first respondent was removed from service for similar cash and ticket irregularities on 15-12-1999 but was reinstated by the appellate authority on 02-06-2000 and was again involved in similar acts of misconduct on 03-11-2003 for which he was imposed the punishment of removal from service.

In **Karnataka State Road Transport Corporation v. B.S.Hullikatti**[2], the Supreme Court observed that it is the responsibility of bus conductor to collect correct fares from the passengers and deposit the same in the Corporation, that conductors act in fiduciary capacity, it would be gross misconduct if knowingly they did not collect any fare or the correct amount of fare and that, in such cases, interference with the punishment of dismissal from service was a case of misplaced sympathy by the Labour Court. In **Regional Manager, Rajastan State Transport Corporation v. Ghanshyam Sharma**[3], the Supreme Court held that the proved acts amounted either to a case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions cause financial loss to the Corporation, are not fit to be retained in service. In **V.Ramana v. A.P.S.R.T.C**[4], the Supreme Court held that Courts/Tribunals should not interfere unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal.

The present case is not one where the Labour Court has come to the conclusion that failure on the part of the conductor was by mistake or oversight. The Labour Court has agreed with the findings of the enquiry officer that the action of the first respondent/conductor in not issuing tickets was a deliberate act on his part. Having recorded such a finding, there was no justification, whatsoever, for

the Labour Court to interfere with the quantum of punishment imposed by the employer. It is well settled that the nature and extent of punishment to be imposed for proved acts of misconduct is, ordinarily, in the employer's realm and while the Labour Court, undoubtedly, has the power to interfere and modify the punishment imposed, in exercise of its jurisdiction under Section 11-A of the Act, such exercise of power cannot be as a matter of course or on grounds of misplaced sympathy. The facts of the present case would reveal that the Labour Court had shown misplaced sympathy in interfering with the punishment imposed on the first respondent by the petitioner-Corporation. The award of the Labour Court is accordingly quashed.

The Writ Petition is accordingly allowed. However, in the circumstances, without costs.

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06-03-2007

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[1] 1988 Lab.I.C. 833

[2] AIR 2001 SC 930

[3] 2002(1)LLJ 234

[4] AIR 2005 SC 3417